

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SALOME AGUAYO-BECERRA,

Plaintiff,

v.

GOODMAN CONVEYOR COMPANY, *et*
al.,

Defendants.

CASE NO. C15-1561-JCC

ORDER ON MOTION TO DISMISS
PARTIES

This matter comes before the Court on Plaintiff's unopposed motion to dismiss Defendants Goodman Conveyor Company ("GCC") and TPI Engineered Systems, Inc. ("TPI") (Dkt. No. 76). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS the motion for the reasons explained herein.

Plaintiff Salome Aguayo-Becerra sustained serious injuries to his hand while operating a conveyor at his workplace Ash Grove Cement Company ("Ash Grove"). (Dkt. No. 17 at 3–4.) On September 23, 2015, Plaintiff initiated this personal injury suit against Ash Grove and "John Does 1-12," unknown parties who designed and manufactured the conveyor. (Dkt. No. 1-1 at 4, 5–6.) On November 30, 2015, Ash Grove was dismissed from the suit under the parties' arbitration agreement. (Dkt. No. 12.) On March 28, 2016, Plaintiff's amended complaint

1 identified Defendant Goodman Conveyor Company (GCC) as the conveyor's designer,
2 manufacturer, and distributor. (Dkt. No. 17 at 3.) On November 1, 2016, Plaintiff filed a second
3 amended complaint adding named defendants, including TPI and FLSmidth, Inc. Cement
4 Products Americas ("FLS"). (Dkt. Nos. 38.) After further discovery, all unnamed defendants and
5 a number of named defendants were voluntarily dismissed. (Dkt. Nos. 17, 37, 57.) Plaintiff now
6 represents that continued discovery has revealed that FLSmidth, Inc. (f/k/a Fuller Co.) alone
7 "should be responsible for the damages caused by the defective product in this action." (Dkt. No.
8 76 at 1.) Plaintiff moves to dismiss remaining defendants TPI and GCC.

9 Under Federal Rule of Civil Procedure 41(a)(2) "an action may be dismissed by the
10 plaintiff's request . . . by court order, on terms the court considers proper." Such dismissal is
11 "within the sound discretion of the court." Fed. R. Civ. Pro. 41(a)(2); *see Hargis v. Foster*, 312
12 F.3d 404, 412 (9th Cir. 2002). Where a moving party does not specify whether the dismissal is
13 with or without prejudice, a Court is "required to interpret the motion one way or the other."
14 *Babcock v. McDaniel*, 148 F.3d 797, 799 (7th Cir. 1998); *see also Hargis*, 312 F.3d at 412.

15 Here, Rule 41(a) requires dismissal by court order because Defendants GCC and TPI
16 have already filed answers (Dkt. Nos. 59, 62), and—although Plaintiff's motion states that
17 remaining defendants GCC, TPI, and FLS have agreed to the dismissal of GCC and TPI—parties
18 have not presented a stipulation signed by all parties to that effect. *See* Fed. R. Civ. Pro.
19 41(a)(1)(i)–(ii); (Dkt. No. 76 at 10.) Considering that Defendants have been involved in this suit
20 for over a year and have participated in discovery during that time, as well as Plaintiff's
21 representation that the statute of limitations has run on claims put forward here, the Court finds it
22 appropriate to dismiss Defendants GCC and TPI with prejudice. *See Hargis*, 312 F.3d at 412; *see*
23 *also LeCompte v. Mr. Chip, Inc., et al.*, 528 F.2d 601, 604 (5th Cir. 1976).

24 For the foregoing reasons, Plaintiff's motion to dismiss parties (Dkt. No. 76) is
25 GRANTED. Defendants Goodman Conveyor Company and TPI Engineered Systems, Inc. are
26 DISMISSED with prejudice. The Court DIRECTS the Clerk to change the case caption to reflect

1 the only remaining defendant as FLSmith, Inc. Cement Projects Americas.

2 DATED this 6th day of October 2017.

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6 John C. Coughenour
7 UNITED STATES DISTRICT JUDGE
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